

(Added Pub. L. 111-152, title I, §1405(a)(1), Mar. 30, 2010, 124 Stat. 1064; amended Pub. L. 114-113, div. Q, title I, §174(a), Dec. 18, 2015, 129 Stat. 3071.)

#### REFERENCES IN TEXT

Section 201(h) of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(1), is classified to section 321(h) of Title 21, Food and Drugs.

#### PRIOR PROVISIONS

For prior sections 4191, 4192, 4201, and 4211, see Prior Provisions note set out preceding this section.

#### AMENDMENTS

2015—Subsec. (c). Pub. L. 114-113 added subsec. (c).

#### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, §174(b), Dec. 18, 2015, 129 Stat. 3072, provided that: “The amendment made by this section [amending this section] shall apply to sales after December 31, 2015.”

#### EFFECTIVE DATE

Pub. L. 111-152, title I, §1405(c), Mar. 30, 2010, 124 Stat. 1065, provided that: “The amendments made by this section [enacting this section and amending sections 4221 and 6416 of this title] shall apply to sales after December 31, 2012.”

### Subchapter F—Special Provisions Applicable to Manufacturers Tax

Sec.	
4216.	Definition of price.
4217.	Leases.
4218.	Use by manufacturer or importer considered sale.
4219.	Application of tax in case of sales by other than manufacturer or importer.
[4220 to 4225. Repealed.]	

#### AMENDMENTS

1958—Pub. L. 85-859, title I, §§117(d), 119(b)(3), Sept. 2, 1958, 72 Stat. 1281, 1286, substituted “Leases” for “Lease considered sale” in item 4217, and struck out items 4220 to 4225.

1956—Act June 29, 1956, ch. 462, title II, §207(b), 70 Stat. 392, added item 4226 and redesignated former item 4226 as 4227.

#### § 4216. Definition of price

##### (a) Containers, packing and transportation charges.

In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary in accordance with the regulations.

##### (b) Constructive sale price

###### (1) In general

If an article is—

- (A) sold at retail,
- (B) sold on consignment, or

(C) sold (otherwise than through an arm’s length transaction) at less than the fair market price,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. In the case of an article sold at retail, the computation under the preceding sentence shall be on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. This paragraph shall not apply if paragraph (2) applies.

##### (2) Special rule

If an article is sold at retail or to a retailer, and if—

(A) the manufacturer, producer, or importer of such article regularly sells such articles at retail or to retailers, as the case may be,

(B) the manufacturer, producer, or importer of such article regularly sells such articles to one or more wholesale distributors in arm’s length transactions and he establishes that his prices in such cases are determined without regard to any tax benefit under this paragraph, and

(C) the transaction is an arm’s length transaction,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold by such manufacturer, producer, or importer to wholesale distributors (other than special dealers).

##### (3) Constructive sale price in case of certain articles

Except as provided in paragraph (4), for purposes of paragraph (1), if—

(A) the manufacturer, producer, or importer of an article regularly sells such article to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer, and

(B) such distributor regularly sells such article to one or more independent retailers, but does not regularly sell to wholesale distributors,

the constructive sale price of such article shall be 90 percent of the lowest price for which such distributor regularly sells such article in arm’s-length transactions to such independent retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustments under subsections (a) and (e) and under section 6416(b)(1). If both this paragraph and paragraph (4) apply with respect to an article, the constructive sale price for such article shall be

the lower of the constructive sale price determined under this paragraph or paragraph (4).

**(4) Constructive sale price in case of certain other articles**

For purposes of paragraph (1), if—

(A) the manufacturer, producer, or importer of an article regularly sells (except for tax-free sales) only to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer,

(B) the distributor regularly sells (except for tax-free sales) such article only to retailers, and

(C) the normal method of sales for such articles within the industry by manufacturers, producers, or importers is to sell such articles in arm's-length transactions to distributors,

the constructive sale price for such article shall be the price at which such article is sold to retailers by the distributor, reduced by a percentage of such price equal to the percentage which (i) the difference between the price for which comparable articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, and the price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers, is of (ii) the price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustment under subsections (a) and (e) and under section 6416(b)(1).

**(5) Definition of lowest price**

For purposes of paragraphs (1) and (3), the lowest price shall be determined—

(A) without requiring that any given percentage of sales be made at that price, and

(B) without including any fixed amount to which the purchaser has a right as a result of contractual arrangements existing at the time of the sale.

**(c) Partial payments**

In the case of—

(1) a lease (other than a lease to which section 4217(b) applies),

(2) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

(3) a conditional sale, or

(4) a chattel mortgage arrangement wherein it is provided that the sales price shall be paid in installments,

there shall be paid upon each payment with respect to the article a percentage of such payment equal to the rate of tax in effect on the date such payment is due.

**(d) Sales of installment accounts**

If installment accounts, with respect to payments on which tax is being computed as pro-

vided in subsection (c), are sold or otherwise disposed of, then subsection (c) shall not apply with respect to any subsequent payments on such accounts (other than subsequent payments on returned accounts with respect to which credit or refund is allowable by reason of section 6416(b)(5)), but instead—

(1) there shall be paid an amount equal to the difference between (A) the tax previously paid on the payments on such installment accounts, and (B) the total tax which would be payable if such installment accounts had not been sold or otherwise disposed of (computed as provided in subsection (c)); except that

(2) if any such sale is pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding, the amount computed under paragraph (1) shall not exceed the sum of the amounts computed by multiplying (A) the proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment by (B) the rate of tax under this chapter in effect on the date such unpaid installment payment is or was due.

The sum of the amounts payable under this subsection and subsection (c) in respect of the sale of any article shall not exceed the total tax.

**(e) Exclusion of local advertising charge from sale price**

**(1) Exclusion**

In determining, for purposes of this chapter, the price for which an article is sold, there shall be excluded a charge for local advertising (as defined in paragraph (4)) to the extent that such charge—

(A) does not exceed 5 percent of the price for which the article is sold (as determined under this section by excluding any charge for local advertising),

(B) is a separate charge made when the article is sold, and

(C) is intended to be refunded to the purchaser or any subsequent vendee in reimbursement of costs incurred for local advertising.

In the case of any such charge (or portion thereof) which is not so refunded before the first day of the fifth calendar month following the calendar year during which the article was sold, the exclusion provided by the preceding sentence shall cease to apply as of such first day.

**(2) Aggregate amount which may be excluded**

In the case of articles upon the sale of which tax was imposed under the same section of this chapter—

(A) The sum of (i) the aggregate of the charges for local advertising excluded under paragraph (1), plus (ii) the aggregate of the readjustments for local advertising under section 6416(b)(1) (relating to credits or refunds for price readjustments), shall not exceed

(B) 5 percent of the aggregate of the prices (determined under this section by excluding all charges for local advertising) at which

such articles were sold in sales on which tax was imposed by such section of this chapter.

The preceding sentence shall be applied to each manufacturer, producer, and importer as of the close of each calendar quarter, taking into account the items specified in subparagraphs (A) and (B) for such calendar quarter and preceding calendar quarters in the same calendar year.

**(3) No adjustment for other advertising charges**

Except to the extent provided by paragraphs (1) and (2), no charge or expenditure for advertising shall serve, for purposes of this section or section 6416(b)(1), as the basis for an exclusion from, or as a readjustment of, the price of any article.

**(4) Local advertising defined**

For purposes of this section and section 6416(b)(1), the term "local advertising" means only advertising which—

(A) is initiated or obtained by the purchaser or any subsequent vendee,

(B) names the article for which the price is determinable under this section and states the location at which such article may be purchased at retail, and

(C) is broadcast over a radio station or television station, appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

(Aug. 16, 1954, ch. 736, 68A Stat. 493; Aug. 9, 1955, ch. 677, §§1, 2, 69 Stat. 613; Pub. L. 85-859, title I, §§115, 116, 117(b), Sept. 2, 1958, 72 Stat. 1279-1281; Pub. L. 86-781, §1, Sept. 14, 1960, 74 Stat. 1017; Pub. L. 87-770, §2(a), Oct. 9, 1962, 76 Stat. 768; Pub. L. 87-858, §1(a), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 89-44, title II, §§207(a), (b), 208(a), (b), title VIII, §801(b), June 21, 1965, 79 Stat. 140, 141, 158; Pub. L. 91-172, title IX, §932(a), Dec. 30, 1969, 83 Stat. 725; Pub. L. 91-614, title III, §301(a), (b), Dec. 31, 1970, 84 Stat. 1844; Pub. L. 92-178, title IV, §401(g)(4), Dec. 10, 1971, 85 Stat. 533; Pub. L. 94-455, title XIX, §§1904(a)(2), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1811, 1834; Pub. L. 95-458, §1(a), (b), Oct. 14, 1978, 92 Stat. 1255; Pub. L. 98-369, div. A, title VII, §735(c)(6), July 18, 1984, 98 Stat. 982.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-369, §735(c)(6)(A), in provisions following subpar. (C) struck out "(other than an article the sale of which is taxable under section 4061(a))" in second sentence, before "the computation under the preceding sentence", and struck out provision that in the case of an article the sale of which is taxable under section 4061(a) and which is sold at retail, the computation under the first sentence of this paragraph shall be a percentage (not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade (determined without regard to any individual manufacturer's or producer's cost).

Subsec. (b)(2)(B) to (D). Pub. L. 98-369, §735(c)(6)(B), inserted "and" at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which related to articles upon which tax is imposed under section 4061(a) of this title.

Subsec. (b)(3). Pub. L. 98-369, §735(c)(6)(D), substituted "paragraph (4)" for "paragraphs (4) and (5)".

Subsec. (b)(5), (6). Pub. L. 98-369, §735(c)(6)(C), (E), redesignated par. (6) as par. (5), substituted "(1) and (3)"

for "(1), (3) and (5)", and struck out former par. (5) which related to constructive sale price in the case of automobiles, trucks, etc.

Subsec. (f). Pub. L. 98-369, §735(c)(6)(F), struck out subsec. (f) which related to certain trucks incorporating used components.

1978—Subsec. (b)(1). Pub. L. 95-458 substituted "article sold at retail (other than an article the sale of which is taxable under section 4061(a)), the computation" for "article sold at retail, the computation" and inserted provision requiring the computation of tax on articles taxable under section 4061(a) which are sold at retail to be a percentage, but not greater than 100% of the actual selling price based on the highest price for which the articles are sold by manufacturers and producers in the ordinary course of trade, determined without regard to individual manufacturer's or producer's cost.

1976—Subsec. (a). Pub. L. 94-455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94-455, §§1904(a)(2)(B), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" in two places in par. (1), and substituted "subsections (a) and (e)" for "subsections (a) and (f)" in pars. (3), (4), and (5), after "or readjustments under".

Subsecs. (d) to (g). Pub. L. 94-455, §1904(a)(2)(A), redesignated subsecs. (e) to (g) as (d) to (f), respectively.

1971—Subsec. (b)(2)(C), (5). Pub. L. 92-178, §401(g)(4)(A), substituted "(relating to trucks, buses, tractor, etc.)" for "(relating to automobiles, trucks, etc.)".

Subsec. (g). Pub. L. 92-178, §401(g)(4)(B), inserted reference to "tractors," after "buses."

1970—Subsec. (b)(3). Pub. L. 91-614, §301(b), substituted "Constructive sale price" for "Fair market price" in heading, "constructive sale price" for "fair market price" three places in text, substituted "paragraphs (4) and (5)" for "paragraph (4)" and "paragraph (1)" for "paragraph (1)(C)".

Subsec. (b)(4). Pub. L. 91-614, §301(b)(2), substituted "Constructive sale price" for "Fair market price" in heading, "constructive sale price" for "fair market price" in text, and "paragraph (1)" for "paragraph (1)(C)".

Subsec. (b)(5), (6). Pub. L. 91-614, §301(a), added pars. (5) and (6).

1969—Subsec. (b)(3), (4). Pub. L. 91-172 added pars. (3) and (4).

1965—Subsec. (b)(2). Pub. L. 89-44, §208(a), struck out reference to special dealers and to articles upon which tax is imposed under section 4191 or 4211 of this title.

Subsec. (b)(3). Pub. L. 89-44, §208(b), struck out par. (3) which related to special dealers.

Subsec. (c). Pub. L. 89-44, §207(a), struck out "that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment" in text following par. (4) and inserted in lieu thereof "a percentage of such payment equal to the rate of tax in effect on the date such payment is due".

Subsec. (e)(1). Pub. L. 89-44, §207(b)(1), substituted "total tax which would be payable if such installment accounts had not been sold or otherwise disposed of (computed as provided in subsection (c)) for "total tax".

Subsec. (e)(2). Pub. L. 89-44, §207(b)(2), substituted, as factor (A) in the formula for computing the maximum amount, the proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment for the amount for which such accounts are sold, and, as factor (B) in the formula, the rate of tax on the date that such unpaid installment payment is or was due for the rate of tax which applied on the day on which the transaction giving rise to such installment accounts took place.

Subsec. (g). Pub. L. 89-44, §801(b), added subsec. (g).

1962—Subsec. (b)(2)(C). Pub. L. 87-858 inserted "in the case of articles upon which tax is imposed under section 4061(a) (relating to automobiles, trucks, etc.), 4191 (relating to business machines), or 4211 (relating to matches)," before "the normal method".

Subsec. (f)(4)(C). Pub. L. 87-770 substituted “, appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster” for “or appears in a newspaper”.

1960—Subsec. (f). Pub. L. 86-781 added subsec. (f).

1958—Subsec. (b). Pub. L. 85-859, §115, inserted provisions in par. (1) requiring, in the case of an article sold at retail, the computation to be on either the price for which the article is sold, or the highest price for which the articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, whichever is lower, and added pars. (2) and (3).

Subsec. (c). Pub. L. 85-859, §117(b), substituted “section 4217(b)” for “subsection (d)”.

Subsec. (d). Pub. L. 85-859, §117(b), repealed subsec. (d) which related to tax on leases of certain trailers.

Subsec. (e). Pub. L. 85-859, §116, added subsec. (e).

1955—Subsec. (c)(1). Act Aug. 9, 1955, §1, inserted “(other than a lease to which subsection (d) applies)”.

Subsec. (d). Act Aug. 9, 1955, §2, added subsec. (d).

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-458, §1(c), Oct. 14, 1978, 92 Stat. 1255, provided that: “The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer or producer on or after the first day of the first calendar quarter beginning 30 days or more after the date of enactment of this Act [Oct. 14, 1978].”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(a)(2) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to articles sold on or after the day after Dec. 10, 1971, see section 401(h)(1) of Pub. L. 92-178, set out as a note under section 4061 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-614, title III, §301(c), Dec. 31, 1970, 84 Stat. 1844, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section] shall apply with respect to articles sold after December 31, 1970; except that section 4216(b)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall also apply to (1) the application of paragraph (1) of such section 4216(b) to articles sold after June 30, 1962, and before January 1, 1971, and (2) the application of paragraph (3) of such section 4216(b) to articles sold after December 31, 1969, and before January 1, 1971.”

#### EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title IX, §932(b), Dec. 30, 1969, 83 Stat. 725, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold after December 31, 1969.”

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 207(a), (b) of Pub. L. 89-44 effective June 22, 1965, and amendment by section 208 of Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, or 4131 and, as to such taxes, applicable with re-

spect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89-44, set out as a note under section 4161 of this title.

Pub. L. 89-44, title VIII, §801(e), June 21, 1965, 79 Stat. 158, provided that: “The amendments made by subsections (a), (b), and (d) [amending this section and sections 4063, 4221, and 6416 of this title] shall apply with respect to articles sold on or after the day after the date of the enactment of this Act [June 21, 1965]. The amendment made by subsection (c) [amending section 4221 of this title] shall apply with respect to articles sold on or after January 1, 1965.”

#### EFFECTIVE DATE OF 1962 AMENDMENTS

Pub. L. 87-858, §1(b), Oct. 23, 1962, 76 Stat. 1134, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer on or after October 1, 1962.”

Pub. L. 87-770, §2(b), Oct. 9, 1962, 76 Stat. 768, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than 20 days after the date of the enactment of this Act [Oct. 9, 1962].”

#### EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-781, §3, Sept. 14, 1960, 74 Stat. 1018, provided that: “The amendments made by this Act [amending this section and section 6416 of this title] shall apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than twenty days after the date of the enactment of this Act [Sept. 14, 1960].”

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85-859, Sept. 2, 1958, 72 Stat. 1275.

#### EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 9, 1955, ch. 677, §4, 69 Stat. 614, as amended by act Oct. 22, 1986, Pub. L. 99-514, §2, 100 Stat. 2095, provided that: “The amendments made by subsection (a) [probably should refer to amendments made by sections 1 to 3 of act Aug. 9, 1955, amending this section and section 4217 of this title] shall take effect on the first day of the first month which begins more than 10 days after the date of the enactment of this act [Aug. 9, 1955]. In the application of section 4216(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this Act) to any article which has been leased before the effective date specified in the preceding sentence, under regulations prescribed by the Secretary of the Treasury or his delegate—

“(1) the fair market value of such article shall be the fair market value determined as of such effective date;

“(2) only payments under a lease received on or after such effective date shall be considered in determining when the total tax (as defined in such section 4216(d)) has been paid;

“(3) any lease existing on such effective date, or if there is none, the first lease entered into after such effective date, shall be considered an initial lease (except that fair market value shall be determined as provided in paragraph (1) of this sentence); and

“(4) any lease existing on such effective date shall be considered as having been entered into on such date.”

## § 4217. Leases

### (a) Lease considered as sale

For purposes of this chapter, the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such arti-